

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

\*\*\*\*\*  
**GEORGE R. SWANTON,**

**Plaintiff,**

**-v-**

**9:08-CV-1187 (NAM/DRH)**

**LAWRENCE SCZERBA, S.H.T.A. Central  
New York Psychiatric Center also known  
as Larry Hagan; and CINDY LAW, Medical  
Doctor, Central New York Psychiatric  
Center,**

**Defendants.**

\*\*\*\*\*  
APPEARANCES:

GEORGE R. SWANTON  
04-A-3593  
Attica Correctional Facility  
Post Office Box 149  
Attica, New York 14011  
Plaintiff Pro Se

HON. ERIC T. SCHNEIDERMAN, Attorney General for the State of New York  
CHRISTOPHER W. HALL, Esq., Assistant Attorney General  
The Capitol  
Albany, New York 12224-0341  
Attorney for Defendants

**Hon. Norman A. Mordue, U.S. District Judge:**

**MEMORANDUM-DECISION AND ORDER**

In this action pursuant to 42 U.S.C. § 1983, plaintiff pro se, an inmate in the custody of the New York State Department of Corrections and Community Services (“DOCCS”), alleges that defendants, two employees of the Central New York Psychiatric Center (“CNYPC”), violated his Eighth Amendment rights. Defendants move (Dkt. No. 116) for summary judgment dismissing the second amended complaint (Dkt. No. 84). Upon referral pursuant to 28 U.S.C. §

636(b)(1)(B) and Local Rule 72.3(c), Magistrate Judge Homer has prepared a Report-Recommendation and Order (Dkt. No. 126) recommending that defendants' motion be granted. The Court adopts Magistrate Judge Homer's recitation of the facts, procedural background, and applicable law, and does not repeat them here.

Plaintiff has submitted an objection (Dkt. No. 127) and a supplemental objection (Dkt. No. 129). In view of the nature of plaintiff's objections, the Court conducts *de novo* review. See 28 U.S.C. § 636(b)(1)(C). On *de novo* review, the Court agrees with Magistrate Judge Homer's analysis and conclusions in all respects. Magistrate Judge Homer's factual summary is supported by the record and his discussion of the applicable law is correct. Magistrate Judge Homer properly applied the standard for summary judgment and properly accorded plaintiff the deference to which he is entitled as a pro se litigant. The issues plaintiff raises are either not supported by the record or are not material. For example, citing to page four of the Report-Recommendation and Order, plaintiff takes issue with what he contends is a finding by Magistrate Judge Homer that plaintiff suffered no acute trauma to the shoulder from the incident. The cited portion of the Report-Recommendation and Order, however, is a quote from the affidavit of defendant Cindy Law relating her interpretation of the x-ray report, not a factual finding by Magistrate Judge Homer.<sup>1</sup> There is no merit to plaintiff's objections.

It is therefore

ORDERED that the Report-Recommendation and Order (Dkt. No. 126) is accepted and adopted in full; and it is further

---

<sup>1</sup> The x-ray report states in full: "Three views show moderate degenerative changes at the glenohumeral and acromioclavicular joints. There is calcification at the rotator cuff insertion consistent with calcific tendonitis. There are multiple old healed adjacent rib fractures."

ORDERED that defendants' motion for summary judgment (Dkt. No. 116) is granted and the action dismissed on the merits; and it is further

ORDERED that the Clerk of the Court is directed to serve copies of this Memorandum-Decision and Order in accordance with the Local Rules of the Northern District of New York.

IT IS SO ORDERED.

September 18, 2012

Syracuse, New York

  
Honorable Norman A. Mordue  
U.S. District Judge

N

A

M